IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3689 OF 1996

Association of Engineering Workers)
252, Janata Colony, Ram Narayan)
Narkar Marg, Ghatkopar (East))
Bombay 400 077.).. Petitioner

Versus

1) Anand Tanks & Vessels Pvt. Ltd.)
D-8, M.I.D.C. Street No.16)
Marol, Andheri (East))
Bombay 400 093.)

2) Second Labour Court having its)
office at Arun Chambers, 6th Floor)
Tardeo Main Road, Bombay 400 034.).. Respondents

Mr.N.M.Ganguli for the Petitioner.

Mr.P.K.Rele for Respondent No.1.

Respondent No.2 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 17TH AUGUST 2004

ORAL JUDGMENT :

. This Petition is directed against the Award dated 29th April 1995 passed by the Labour Court, Bombay rejecting Reference (IDA) No.1125 of 1986 made to it for adjudicating the dispute in respect of reinstatement with continuity of service and full back wages of 31 workmen represented by the Petitioner and who were employed with the first Respondent Company. The Labour Court has come to the conclusion that the enquiries conducted against the workmen were fair and proper, that

the findings of the Enquiry Officer were not perverse and that the punishment meted out to the workmen was justified.

2. The first Respondent Company was engaged in the business of manufacture of metal containers and other allied products in its factory. It employed about 150 workmen. It appears that the Petitioner Union started representing the workmen employed with the Company sometime in April 1984. Transfer orders were issued to the workers which they refused to accept and obey. Charge-sheets were, therefore, issued to a set of 12 workmen on 2nd May 1985. Another group of 19 workmen were issued a charge-sheet on 3rd May 1985. The charges levelled against the workmen in both the charge-sheets were common. It was alleged against the workmen that they had assaulted the security staff and had shouted indecent and abusive slogans. It was also alleged that they had failed to accept the transfer orders issued to them and had refused to proceed to the places of transfer. Further allegations of go-slow, obstructing dispatch of goods, etc., were also levelled against the workmen. The Enquiry Officer conducted enquiries ex-parte as the workmen refused to remain present. According to the Enquiry Officer, the charge of assaulting the security staff was proved against six workmen who had been issued charge-sheets on 2nd May 1985. The charge of refusal of the transfer orders was

proved against all the workmen in both the charge-sheets. The Enquiry Officer found that the 31 workmen had committed acts subversive of discipline. The act of obstructing dispatch of goods was held to be proved against five workmen who were issued charge-sheet on 3rd May 1985. After the Enquiry Officer's report was submitted, the disciplinary authority dismissed the services of all the 31 workmen as, according to it, there was no mitigating circumstances to warrant imposition of a lesser punishment than dismissal.

3. Aggrieved by the orders of dismissal, the Petitioner Union raised a dispute on behalf of all 31 workmen which was referred for adjudication before the Labour Court. Pleadings were filed and evidence was also recorded. The Labour Court came to the conclusion that the enquiries held against the workmen were fair and proper in view of the purshis submitted on behalf of the workmen. The Labour Court further came to the conclusion that the charge-sheets could not be said to be illegal as all necessary particulars were mentioned in the charge-sheet. The Labour Court then upheld the findings of the Enquiry Officer and was of the view that they could not be considered to be perverse. While exercising its powers under Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), the Labour Court came to the conclusion that because of the refusal of the workmen to accept the

transfer orders, the Company had to suffer huge losses as their work on two major products undertaken by them in Maharashtra and Uttar Pradesh, to which sites the workmen had been transferred, were seriously affected. The Labour Court found that despite clear instructions, the 31 workmen persistently refused the transfer orders and, therefore, such an act was sufficient to warrant punishment of dismissal. The Labour Court accordingly rejected the Reference.

4. Mr.Ganguli, learned Advocate for the Petitioner, submits that the charge-sheet issued to the workmen concerned is vague since it was devoid of material particulars about the precise misconduct allegedly committed by each individual workman. He then submits that the Enquiry Officer and the Labour Court have acted perversely as they have not considered the role, if any, played by the individual workman in the assault. According to him, this was a vital factor which was required to be considered while imposing the punishment on the workmen. He submits that all the workmen who were allegedly involved in the assault, could not be painted with the same brush as each workman may have played a different role, if at all, in the assault. He then submits that the allegation in the charge-sheet is that the workers refused to accept the transfer orders and further refused to obey the same. This, according to the learned Advocate, cannot constitute an act

subversive of discipline. He urges that the fact that the Enquiry Officer and the Labour Court have considered refusal to accept and obey the transfer orders as acts subversive of discipline would show that they acted perversely. He then submits that the transfer orders issued were neither lawful nor reasonable as the was employer had no right to transfer the workmen. He urges that the workman is expected under the Standing Orders to obey only lawful orders of the employer and hence was not bound to obey an order of the employer transferring him when the employer had no right to issue such directions. He then submits that the workmen are entitled to reinstatement with continuity of service and full back wages.

5. Mr.Rele for the first Respondent Company submits that the Company today has been declared sick under the Sick Industrial Companies (Special Provisions) Act, 1985 on 21st April 1999. Further, the matter is still pending before the Board for Industrial and Financial Reconstruction (BIFR) authority for finalising a scheme for revival of the Company. He submits that the litigation regarding closure of the Company is pending. Therefore, no purpose would be served by giving any relief to the workmen. On merits, the learned Counsel submits that the Labour Court has correctly assessed the situation and has come to the conclusion that the findings of the Enquiry Officer were not perverse and

that the punishment imposed on the workmen was justified. He submits that the Labour Court has considered the legal evidence on record and has taken note of the fact that by not accepting the transfer orders, the workmen had caused a huge loss to the Company and, therefore, no lesser punishment could be imposed on the workmen. According to the learned Counsel, the main allegation against all the workmen was that the transfer orders had been refused. He submits that without going into the question of assault, the charge of refusal to accept the transfer orders has been proved and, therefore, the punishment imposed is warranted.

6. The Labour Court has rightly held that the charge-sheets issued to the workmen are not vague. All the charge-sheets mention that the workmen had assaulted the security staff, but this allegation has been held to be proved only against some of the workmen. Obviously, therefore, there was sufficient material on record to show that only those workmen had indulged in the act of assault. The submission of Mr.Ganguli that the charge-sheet should have mentioned the role played by each individual workman in the assault cannot be accepted. The workmen were made aware by the charge-sheet that they had been charged for committing an assault on the security staff. There was no need to state in the charge-sheet as to how a particular

individual had actually assaulted the security staff. It was sufficient that the workmen were made aware that the allegation against them was of assault. The date and time of the assault had also been mentioned in the charge-sheet. Therefore, the Labour Court, in my view, has rightly come to the conclusion that the charge-sheet was not vague.

7. The submission of Mr.Ganguli that the Enquiry Officer has not considered the role played by individual workman in the assault and, therefore, the findings are perverse also cannot be accepted. Had the Enquiry Officer not considered the role played by the workmen in the assault, all the 31 workmen would have been held guilty of the misconduct of assault. The Enquiry Officer has laboured to decide as to who was actually guilty of the assault on the security staff. Furthermore, the punishment imposed on all the workmen appears to have been imposed on them on account of their refusal to accept the transfer orders. That being so, the submission of the learned Advocate for the Petitioner that it was necessary for the Enquiry Officer to consider the role of each individual workman in the assault for the purpose of exercising the powers under Section 11A of the Act also cannot be accepted.

8. A copy of the charge-sheet is not on record before me. It appears that the workmen had been

charged, inter alia, for refusing to accept the transfer orders and for refusal to obey the transfer orders. According to the employer, this action amounts to an act subversive of discipline. The learned Advocate for the Petitioner submits that refusal to accept the transfer orders can by no stretch of imagination constitute an act of subversive of discipline. The workmen having refused to accept and obey the transfer orders, have acted in an indisciplined manner. The refusal to obey would mean that they wre disobedient. These actions of the workmen would certainly be subversive of discipline and good behaviour. Although the Standing Orders enlist each of these acts as separate acts of misconduct, it would not necessarily mean that when a person refuses to accept a lawful order, the act of the workman is not an act subversive of discipline. This submission of Mr.Ganguli, therefore, is unacceptable.

9. The learned Advocate for the Petitioner then submits that the transfer orders are not lawful orders as there was no right to transfer the workmen. No such pleading has been made in the Statement of Claim nor is there anything on record to show that the employer did not have a right to transfer the workmen. In fact, the Labour Court has come to the conclusion that the workmen were required to proceed to various sites at which the first Respondent Company were required to fabricate machinery for their clients. The workmen were required

to proceed at the site for which they were getting conveyance allowance as well as site allowance. Once the workers had installed the equipment required to be fabricated by the Company at a particular site, the workmen were brought back to the first Respondent's plant. The Labour Court has found that the workmen were often required to continue at a particular site for one year for completing the project. The Labour Court has also found that in the instant case the workmen had failed to report on two major projects in Maharashtra and Uttar Pradesh due to which the work of the Company had been delayed and the Company had been required to pay a hefty penalty. These facts have been brought on record by the witness of the Company who was examined before the Labour Court. Considering all these factors, the Labour Court has rejected the Reference. I see no reason to interfere with these findings of the Labour Court in the facts and circumstances of the present case. There is no doubt that the workmen were required to work at different projects at various sites according to the projects undertaken by the Company. Therefore, the submission made that there was no lawful order to transfer as there was no right to transfer cannot be accepted.

10. The Labour Court has correctly exercised its jurisdiction under Section 11A of the Act and come to the conclusion, in the facts and circumstances of the

present case, that despite clear instructions to proceed to the transferred sites, the workmen have persistently refused. The Labour Court has considered all the aspects including the fact that the action of the 31 workmen had caused great and serious prejudice to the Company. In this view of the matter, Writ Petition fails. Rule discharged. No order as to costs.